

ASSEMBLY BILL

No. 658

Introduced by Assembly Member Charles Calderon

February 16, 2011

An act to amend Section 107 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 658, as introduced, Charles Calderon. Possessory interests.

Existing property tax law requires that all property subject to tax be assessed at its full value, and includes certain possessory interests among those property interests subject to tax. Existing property tax law defines a taxable possessory interest to be a use that is independent, durable, and exclusive.

This bill would make a technical, nonsubstantive change to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 107 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 107. "Possessory interests" means the following:
- 4 (a) Possession of, claim to, or right to the possession of land or
- 5 improvements that is independent, durable, and exclusive of rights
- 6 held by others in the property, except when coupled with ownership
- 7 of the land or improvements in the same person. For the purposes
- 8 of this subdivision:

(1) “Independent” means the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency.

(2) “Durable” means for a determinable period with a reasonable certainty that the use, possession, or claim with respect to the property or improvements will continue for that period.

(3) “Exclusive” means the enjoyment of a beneficial use of land or improvements, together with the ability to exclude from occupancy by means of legal process others who may interfere with that enjoyment. For purposes of this paragraph, “exclusive use” includes the following types of use in property:

(A) Sole occupancy or use of property or improvements.

(B) Use as a cotenant.

(C) Concurrent use by a person who has a primary or prevailing right to use property or improvements at any time.

(D) Concurrent uses by persons making qualitatively different uses of property or improvements.

(E) Concurrent use by persons engaged in similar uses that diminish the quantity or quality of the property or improvements.

(F) Concurrent use that does not diminish the quantity or quality of the property or improvements, if the number of those concurrent use grants is restricted.

A use of property or improvements that does not contain one of the elements in subparagraphs (A) to (F), inclusive, shall be rebuttably presumed to be a nonexclusive use.

(b) Taxable improvements on tax-exempt land.

Any possessory interest may, in the discretion of the county board of supervisors, be considered as sufficient security for the payment of any taxes levied thereon and may be placed on the secured roll.

Leasehold estates for the production of gas, petroleum and other hydrocarbon substances from beneath the surface of the earth, and other rights relating to these substances which constitute incorporeal hereditaments or profits a prendre, are sufficient security for the payment of taxes levied thereon. These estates and

1 rights shall not be classified as possessory interests, but shall be
2 placed on the secured roll.

3 If the tax on any possessory interest or leasehold estate for the
4 production of gas, petroleum and other hydrocarbon substances is
5 unpaid when any installment of secured taxes become delinquent,
6 the tax collector may use those collection procedures which are
7 available for the collection of assessments on the unsecured roll.

8 If the tax on any possessory interest or leasehold estate for the
9 production of gas, petroleum and other hydrocarbon substances
10 remains unpaid at the time set for the declaration of default for
11 taxes carried on the secured roll, the possessory interest tax together
12 with any penalty and costs which may be accrued thereon while
13 on the secured roll shall be transferred to the unsecured roll.